

**TAB 4**

**AFFIDAVIT OF GREG ROBERTSON**

August 6, 2003

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Joint Application by SBC Communications Inc.,	)	
Illinois Bell Telephone Company, Indiana Bell	)	
Telephone Company Incorporated, The Ohio	)	
Bell Telephone Company, Wisconsin Bell, Inc.,	)	WC Docket No. 03-167
and Southwestern Bell Communications	)	
Services, Inc. for Provision of In-Region,	)	
InterLATA Services in Illinois, Indiana, Ohio	)	
and Wisconsin	)	

**AFFIDAVIT OF GREGORY L. ROBERTSON**

1. I, Gregory L. Robertson, have obtained the age of majority and am competent to testify as to the matters contained within this Affidavit.
2. I attended the University of Illinois-Urbana and graduated with a B.A. in Economics. I was employed with the accounting firm of Arthur Andersen, LLP where I focused my professional practice on telecommunications, banking and financial services. I am a Certified Public Accountant.
3. I am currently employed as the Chief Financial Officer and Secretary for Globalcom, Inc. ("Globalcom"). I have held that position since February of 1999. As Chief Financial Officer, I am responsible for the overall financial aspects of the Company, both for overall strategy and day-to-day operations. I am responsible for investor relations, tax and strategy analysis functions. I also have certain marketing responsibilities, including the primary responsibility for the

design and development of Globalcom's products from a cost and return on investment standpoint. I report directly to the CEO and Board of Directors. I oversee the Controller and manage the Finance Department at Globalcom

4. I will address here the facts and circumstances surrounding Globalcom's experiences with SBC-Illinois ("SBC-IL") in regards to accessing combinations of unbundled network elements. Specifically, Globalcom's experiences with the Enhanced Extended Loop or EEL and the application of non-recurring charges.
5. My comments can be summarized as follows: SBC-IL'S most recent non-recurring charges ("NRCs") for new combinations of unbundled network elements comprised of loop and dedicated interoffice transport, otherwise known as an Enhanced Extended Loop ("EEL"), are unreasonable and not TELRIC compliant. The NRCs for new EEL orders are so high that they discourage competitive entry into the Illinois marketplace. The anti-competitive aspects of these non-TELRIC compliant rates are exacerbated by SBC-IL'S anti-competitive practices which add simply another layer to the barrier to competitive entry into the Illinois marketplace. SBC-IL'S Application for §271 Approval should be denied unless SBC-IL reduces its NRCs for new EEL orders.
6. The evidence shows that SBC-IL'S NRCs for new EEL orders have 1) not been investigated by the Illinois Commerce Commission; 2) are far beyond a range that a reasonable application of TELRIC would produce; 3) are over 13 times as high as the California benchmark rates of \$173 that this Commission recently found to be TELRIC compliant; and, 4) are over 240% higher than the rates that SBC-IL itself recently on December 24, 2002, submitted to the Illinois Commerce

Commission were TELRIC compliant. The end result is that competitive carriers, such as Globalcom, cannot efficiently compete against SBC-IL and are, in fact, essentially denied access to EELs because of their economic impracticability.

**GLOBALCOM**

7. Globalcom was founded in 1993 and began operations in 1996 in Chicago, Illinois. It is a facilities based, next generation provider of local, interexchange and data services to enterprise businesses in the Illinois marketplace. Globalcom was built on the proven technology of the Nortel DMS-500 Supernode switches, CISCO 7500 series Internet Routers. While Globalcom is a national carrier, its core market for facilities based services is Illinois. This regional focus has allowed Globalcom to drive growth from operating net income and concurrently maintain profitability in order to provide reliable, consistent and solid performance to its business customers.
8. Globalcom's core business strategy is to provide competitive and innovative DS1 services that integrate local and long distance voice and data traffic over the same circuit to business customers. As a facilities based carrier, over 60% of Globalcom's customers are "on-net". In other words, the end user premises are connected directly to Globalcom's own switch facilities through the use of unbundled network elements, loop and dedicated transport.
9. SBC-IL has been the dominant provider of dedicated local services to the Illinois business community and it controls the local exchange network built under rate of return regulation. In the past, SBC-IL has offered these services to Illinois business customers on longer term contracts that carried little if any installation

charges. SBC-IL was able to do this because there were no other providers of those services. Illinois business customers are now accustomed to not paying installation charges for dedicated local services, or paying installation charges there are *de minimis*. SBC-IL very aggressively pursues this particular market and most assuredly will increase its sales and marketing efforts if it obtains approval to provide interexchange services in Illinois since it will bundle local, long distance and data over the same dedicated circuit.

10. In order for competitive carriers, like Globalcom, to compete against SBC-IL'S dedicated service offerings to enterprise businesses, the NRCs must be streamlined and efficient and comply with TELRIC so that all carriers are on a level playing field.
11. In order to compete fairly against SBC-IL, Globalcom has learned through its significant market experience over the past seven years that a competitive carrier simply cannot fairly compete against SBC-IL if it has no real alternative but to purchase special access services from SBC-IL at retail rates and under long term contracts. Therefore, the EEL combination is critical to lowering the significant barriers to competitive entry into the Illinois marketplace for dedicated services.
12. Globalcom uses the unbundled network element combinations of Loop and Dedicated Interoffice Transport to connect its end users directly to its own switch facilities. Those unbundled network elements when ordered in combination at TELRIC-based rates provide a cost effective and efficient means of accessing the end user location and providing next generation services to Illinois business customers.

13. Globalcom has significant experience with ordering special access in order to provide dedicated local services to enterprise businesses. Prior to September of 2002, Globalcom had no alternatives but to order special access services from SBC-IL. Based upon that experience, it is my opinion that the use of special access to provision dedicated local services to enterprise businesses in direct competition with SBC-IL is an unsustainable business model.
14. First, SBC special access services are retail based offerings equally available to both carriers and end users directly under the same rates, terms and conditions. By definition this is an unsustainable wholesale arrangement. Second, competitive carriers have no choice then but to meet SBC-IL'S monthly recurring charges, a prospect that requires that the requesting carrier in order to compete against SBC-IL rates order services under the same contract length that the end user would have ordered directly. Third, this entire arrangement resulted in a business model that required the requesting carrier to set its monthly recurring charges well below actual cost and increase usage rates as an offset. As the market grows more competitive, as it should, market forces press usage rates downward, which makes cost recovery unlikely.

**NON-RECURRING CHARGES**

15. Globalcom has been working to access EELs since early 2001. It was not until June 30, 2001, that SBC-IL'S legal obligation to combine loop and transport on behalf of requesting became indisputably clear. The Illinois General Assembly at that time passed and the Governor of Illinois signed the 2001 Re-Write of the

Illinois Telecommunications Act, which provides in part that SBC-IL has a legal duty to combine network elements on behalf of requesting carriers.

16. For a variety of reasons which are not pertinent to the issues Globalcom raised in its comments, Globalcom was unable to order new EELs at all until July 12, 2002, when SBC-IL filed its tariff for new EELs, Ill.C.C. No. 20, Part 19, Section 20<sup>1</sup>
17. On July 16-17, 2002, I testified before the Illinois Commerce Commission in the matter of Globalcom, Inc. v. Illinois Bell Telephone Company, ICC Docket 02-0365. Part of my testimony included an analysis of damages SBC-IL caused Globalcom as a direct result of SBC-IL'S anti-competitive conduct in regards to EELs. I testified at that time that based upon a review of SBC-IL tariffs in place then that the total of NRCs for a 4 wire digital loop and dedicated interoffice transport combination was \$661.02. SBC-IL did not take issue with my analysis of the proper application of NRCs for new EELs.
18. During this time, Globalcom operations personnel were in discussions with SBC-IL personnel in order to develop methods and procedures for ordering new EELs under the recently filed SBC-IL tariffs. These discussions resulted, among other things, in the development of a network design referred to as Option 1, which would allow Globalcom to order new EELs.<sup>2</sup>
19. It became very clear to Globalcom based on those discussions with various SBC-IL personnel that there was significant internal SBC-IL debate and uncertainty as

---

<sup>1</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 4.

<sup>2</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 14.

to not only the methods and practices for ordering new EELs, but more importantly to me as CFO, the proper rate application for NRCs. Various SBC-IL personnel prior to August 22, 2002, gave various interpretations of the then effective tariffs. As a result of this, on August 22, 2002, Globalcom personnel had a meeting with senior SBC-IL personnel. One of the agenda items was the official SBC-IL position on the interpretation of its then effective tariffs for new EEL NRCs. Using a diagram of Option 1 as a common reference, Globalcom personnel and SBC-IL personnel agreed at that meeting that the proper rate application for the particular EEL combination that Globalcom would be ordering was \$661.02.<sup>3</sup>

20. It is important to note that the email also references DS3 entrance facilities. The NRCs for DS3 entrance facilities were relevant because Option 1 required that Globalcom consolidate, or bring back, all of its EEL orders in LATA 358 to a CFA assignment on a DS3 located at the nearest SBC-IL central office to Globalcom's own switch facilities.

21. With the understanding that the total NRCs for Option 1 were \$661.02 based upon SBC-IL'S interpretation of its own tariff No. 20, Part 19, Section 20, filed July 11, 2002, effective July 12, 2002, Globalcom moved forward on ordering new EELs. This involved a significant change to Globalcom's then existing products, marketing strategy, back office systems and overall business model.

---

<sup>3</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 7.



22. On October 19, 2002, Globalcom began to receive the first invoices from SBC-IL for new EEL orders. Inexplicably, the SBC-IL invoices showed NRCs for Option 1 (4 wire digital loop with dedicated DS1 interoffice transport) as \$1,663.08. It appeared that instead of invoicing Globalcom for the three NRCs that had been agreed to (Administration Charge per order; Design and CO Connection Charge, per circuit; and, a Carrier Connection Charge, per termination) for the 4 wire digital loop to DS1 dedicated interoffice transport, SBC-IL was invoicing NRCs for stand alone DS1 interoffice transport as if Globalcom had ordered those services as entrance facilities to its switch. SBC-IL billing personnel could not explain the rate application.
23. Globalcom requested on numerous occasions that SBC-IL explain the discrepancy between the agreed upon NRCs and the NRCs that appeared on the invoices. Globalcom disputed the charges and SBC-IL billing personnel did not provide an explanation for the discrepancy.
24. On December 24, 2002, SBC-IL filed cost studies and a tariff for new EELs combinations. That filing alleged that the total NRCs for a new EEL combination of a 4 wire digital loop to DS1 dedicated interoffice transport was \$937.58.
25. The Illinois Commerce Commission began an investigation into the December 24, 2002, SBC-IL rate filing. Globalcom intervened in that proceeding and elected to address the NRC rate application in that forum. I have been advised that under Illinois law, that proceeding had to be concluded no later than November 2003.

Therefore, Globalcom was confident that this issue would come to a certain close by that time.

26. On May 9, 2003, after four intense days of legislative activity, SBC-IL successfully had the Illinois Governor sign into law a direct mandate to the Illinois Commerce Commission that it place into effect the TELRIC rates as proposed by SBC-IL on December 24, 2002. As a result, the Illinois Commerce Commission dismissed its investigation of SBC-IL'S December 24, 2002, TELRIC filing.

27. After the Illinois Commerce Commission dismissed that TELRIC rate investigation, a federal court issued a permanent injunction ordering the state of Illinois not to enforce the law as signed by the Governor on May 9, 2003. Had the law gone into effect, the total NRCs for a new EEL order of a 4 wire digital loop to DS1 dedicated interoffice transport would be \$937.58, although experts retained by Globalcom and numerous other CLECs concluded that even that rate was unreasonable and non-TELRIC compliant.

**SBC-IL COLLECTION EFFORTS AND LATEST NRCs FOR NEW EEL ORDERS**

28. Beginning in July 2003, SBC-IL'S collections department began a new push to have Globalcom pay all past disputed amounts for new EEL NRCs.

29. My Finance department again notified SBC-IL'S collection department that these amounts were in dispute. In response, on July 17, 2003, SBC-IL'S Globalcom Account Manager sent an email to Globalcom's controller stating that all amounts billed were in fact correct, that all billing disputes were rejected and that the total

NRCs were, in fact, \$1,624.83, again only applying those NRCs for stand alone DS1 interoffice transport.<sup>4</sup> It is important to note that at no time prior to August 22, 2002, the date that SBC-IL and Globalcom mutually agreed as to the proper interpretation of the EELs tariff, did SBC-IL ever take the position that NRCs for new EEL orders would be \$1,624.83.

30. The Controller for Globalcom again disputed SBC-IL'S rate application and re-affirmed its dispute of the charges.
31. On July 22, 2003, **the same SBC-IL Account Manager** sent another email to the Controller for Globalcom and stated, for the first time ever, that the **actual** NRCs for a new EEL order of a 4 wire digital loop to DS1 dedicated interoffice transport total \$2,286.21.<sup>5</sup>
32. On July 24, 2003, I had a telephone conference with SBC-IL Vice President – Wholesale Accounts Thomas Harvey and SBC-IL Director – Account Manager Peggy Beatta, where they stated that the past invoices for \$1,624.83 were correct, that the proper NRC total is \$2,286.21, and that on a go forward basis the invoices would show the later NRC total. They also stated that SBC-IL would that same day send a Resale Demand Letter threatening to suspend provisioning or disconnect service if Globalcom did not agree to immediately pay all disputed amounts. It is important to note that although SBC-IL has updated its EEL tariff No. 20, Part 19, Section 20, Sheet No. 6, it has not changed one iota the form or

---

<sup>4</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 10.

<sup>5</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 11.

August 6, 2003

substance of the section on new EEL NRCs since originally filed July 11, 2002.

On July 24, 2003, Globalcom received the Resale Demand Letter as described by

Mr. Harvey and Ms. Beatta.<sup>6</sup>

**EFFECT OF LATEST SBC-IL INTERPREATION OF EEL TARIFF**

33. As CFO for Globalcom, I am one of the persons responsible for the development of its business plan and strategy.

34. SBC-IL'S current tariff does provide for a true-up of the NRCs from February 6, 2003.

35. Globalcom has been ordering EELs based upon SBC-IL'S August 22, 2002, interpretation of its tariff since August 23, 2002.

36. As I stated earlier, SBC-IL aggressively competes in the market for dedicated local services to enterprise businesses. Conditions in the enterprise market do not permit a product that requires a significant installation fee.

37. The invoiced NRCs create a significant barrier to Globalcom's continued entry into the Illinois local market, let alone SBC-IL recent demand that it will increase that rate over \$600 on a go forward basis. It is a significant barrier to entry because by inflating Globalcom's overall service establishment charge for new customers, SBC-IL is unfairly and unlawfully attempting to pass non-TELRIC compliant rates onto requesting competitive carriers. These non-TELRIC

---

<sup>6</sup> Tab 5, Factual Background of EEL NRC SBC Agreed to Charge Globalcom Based Upon SBC's Original Interpretation of Its Tariff, at Attachment 12.

compliant rates simply cannot be passed onto the customer, since market conditions in competition with SBC-IL simply will not permit. Customers, based upon based experiences with SBC-IL'S similar products, will not pay a significant installation charge, especially one that is over \$2,000 for a service that has a monthly recurring cost of less than \$500.

38. The inflation of the service establishment charges drains a crucial commodity from Globalcom – cash. The prospect of recovering the inflated costs paid to SBC-IL at some unknown point in the future is too uncertain to permit a management team to exercise its reasonable business judgment and conclude that it should incur those inflated costs now. Management simply cannot justify to its Board of Directors or shareholders that it is reasonable to incur costs that are 12 times greater than a benchmark rate, like California's rate of \$173, until an investigation occurs and there is a true-up. Under current capital market conditions, Globalcom needs the full extent of its capital resources now so that it can obtain additional facilities and resources necessary to continue to grow operations.

39. The only reasonable conclusion to draw from these circumstances is that Globalcom would have to abandon its current entry strategy until the Illinois Commerce Commission completes its *first* TELRIC investigation into the NRCs for new EELs. That investigation could take years to complete and there is no indication as to when it would commence.

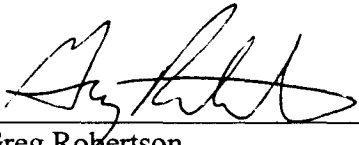
40. Consequently, SBC-IL'S inflated non-TELRIC based NRCs for new EEL combinations, specifically the 4 wire digital loop to DS1 dedicated transport

combination, are an insurmountable barrier to entry that will impede Globalcom's ability to compete in the Illinois marketplace. It will most certainly cause Globalcom to withdraw its current dedicated local services products that integrate voice and data services onto the same circuit.

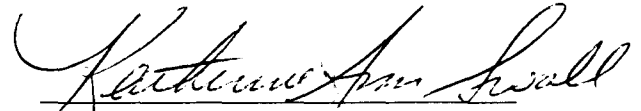
41. It is also important to note, Globalcom is very aware that the FCC has preliminarily concluded that there will no longer be a presumption of impairment for unbundled local switching. Access to EELs is a premise of that analysis and conclusion. Facilities based carriers can provide efficient switching themselves *so long as* there is a means of reaching the end user from the switch facilities. That is another reason that it is critical to ensure that the costs of access to EELs are TELRIC compliant before this Commission grants SBC-IL 271 approval.

AFFIANT FURTHER SAYETH NOT

This concludes my statement.

  
\_\_\_\_\_  
Greg Robertson

Subscribed and sworn to before me, KATHERINE ANN SWALL, this 3<sup>rd</sup> day  
of AUGUST, 2003.

  
\_\_\_\_\_  
Notary Public

Katherine Ann Swall  
Notary Public in and for  
The District of Columbia

MY COMMISSION EXPIRES  
OCTOBER 31, 2007

(Notary Seal)

